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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,041	03/30/2001	Francois Gugumus	A-22181/US/A	1010
324 7590 12/03/2003 CIBA SPECIALTY CHEMICALS CORPORATION PATENT DEPARTMENT 540 WHITE PLAINS RD P O BOX 2005 TARRYTOWN, NY 10591-9005			EXAMINER YOON, TAE H	
			ART UNIT 1714	PAPER NUMBER

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/823,041

Applicant(s)

GUGUMUS, FRANCOIS

Examiner

Tae H Yoon

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5 and 8-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5 and 8-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5 and 8-14 are rejected under 35 U.S.C. 103(a) as obvious over Niira et al (US 4,938,955).

Niira et al teach an antibiotic resin composition comprising various UV absorbers, antioxidants, light stabilizers, UV stabilizers and mixtures thereof at col. 4, lines 8-68. Various resins such as polyethylene, polypropylene and polyester are also taught at col. 5, lines 19-33. Said polyethylene would encompass polyethylene polymerized with any art known catalyst.

It would have been obvious to one skilled in the art at the time of invention to utilize the instant mixtures of UV absorbers in stabilizing polyethylene or polypropylene of Niira et al since Niira et al teach such modification.

Applicant has asserted unexpected result, but the examiner pointed out that such assertion has little probative value in the final rejection (see *In re Susi*, 169 USPQ 423,

CCPA 1971). Even if some data of tables in the specification have any probative value, the scope of the claim is broader than the actual showing.

Claims 1 and 5-13 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 9193322.

Rejection is maintained for reason of record, and applicant failed to rebut the examiner's reasoning in the advisory action.

Claims 1 and 5-13 are rejected under 35 U.S.C. 103(a) as obvious over JP 9193322 in view of Birbaum et al (US 5,736,597).

Rejection is maintained for reason of record, and applicant failed to rebut the examiner's reasoning in the advisory action with respect to JP.

Claims 1, 5 and 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birbaum et al (US 5,736,597), Niira et al (US 4,938,955) or Avar et al (US 4,891,396) alone, or in view of JP 9193322, Musser et al (US 4,524,165), Jollenbeck et al (US 5,498,345), WO 97/39052) or Luethi et al (US 3,529,982).

Birbaum et al (abstract, col. 36, line 63 to col. 37, line 32, col. 41, line 56 to col. 42, line 28), Niira et al (col. 4, lines 8-68 and col. 5, lines 19-33) and Avar et al (abstract, col. 2, lines 42-43 and col. 3, lines 5-6 and 39-43) teach employing mixture of stabilizers recited in the instant invention for stabilizing polyolefins.

JP 9193322 (examples 2-3), Musser et al (tables I-V), Jollenbeck et al (abstract and examples) and WO 97/39052 (table 1 and 2) teach the use of mixed stabilizers for stabilizing polymers, and Luethi et al (col. 2) teaches the instant oxanilide.

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It would have been obvious to one of ordinary skill in the art at the time of the instant invention to utilize the art well known mixtures of stabilizers recited in the instant invention in Birbaum et al, Avar et al, or Niira et al with or without teaching of JP 9193322, Musser et al, Jollenbeck et al, WO 97/39052 or Luethi et al since Birbaum et al, Avar et al and Renz et al teach employing stabilizer mixtures and since choosing species from the disclosed species is considered a *prima facie* obviousness.


The method of stabilizing polymers, any polymer in fact, by utilization of stabilizer mixtures in order to obtain a synergistic effect is a routine practice in the art as evidenced by JP 9193322, Niira et al, Musser et al, Jollenbeck et al, WO 97/39052 and Luethi et al. Niira et al teach the use of oxalic anilides with other UV stabilizers, and the use of the art known oxalic anilides taught by Luethi et al with other UV stabilizers would be a *prima facie* obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H Yoon whose telephone number is (703) 308-2389. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

THY/Nov. 28, 2003


Tae H Yoon
Primary Examiner
Art Unit 1714